

City Council Agenda Items  
and  
Contracts, Leases or Agreements

05-Jun-12

City Council Meeting Date  
Agenda Items Only

David Jurgens  
Submitted By

Water & Sewer  
Division

Utilities  
Department

Action Required:

Approval of an Engineering Services Agreement with McClelland Consulting Engineers for \$388,600.00 for water transmission line layout and easement acquisition.

\$ 388,600  
Cost of this request  
  
~~540-5600-5808.00~~  
Account Number  
  
10007.1  
Project Number

\$ 1,000,000  
Category / Project Budget  
  
\$ -  
Funds Used to Date  
  
\$ 1,000,000  
Remaining Balance

Water Improvements  
Program Category / Project Name  
  
Water/Sewer Improvements  
Program / Project Category Name  
  
Water/Sewer  
Fund Name

Budgeted Item

Budget Adjustment Attached

*[Signature]*  
Department Director

15 MAY 12  
Date

Previous Ordinance or Resolution # \_\_\_\_\_

*[Signature]*  
City Attorney

5-15-12  
Date

Original Contract Date: \_\_\_\_\_

Original Contract Number: \_\_\_\_\_

*[Signature]*  
Finance and Internal Services Director

5/17/12  
Date

Received in City 05-15-12 11:41 RCVD  
Clerk's Office  
*[Signature]*

*[Signature]*  
Chief of Staff

5/17/12  
Date

Received in Mayor's Office  
5-15-12 *[Signature]*  
ENTERED

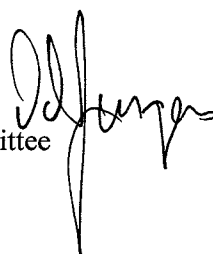
*[Signature]*  
Mayor

5/18/12  
Date

Comments:

To: Fayetteville City Council

Thru: Mayor Lioneld Jordan  
Don Marr, Chief of Staff

From: David Jurgens, Utilities Director  
Water/Sewer/Solid Waste Committee 

Date: May 14, 2012

Subject: Engineering Agreement with McClelland Engineers for \$388,600 for water transmission line layout and easement acquisition

### **RECOMMENDATION**

City Administration recommends approval of an Engineering Services Agreement with McClelland Consulting Engineers for \$388,600 for water transmission line layout and easement acquisition.

### **BACKGROUND**

Drinking water is delivered to the City of Fayetteville through two City owned transmission lines that run from the Beaver Water District (BWD) site in Lowell, through Springdale, to the northeast corner of Fayetteville. These two lines, a 36" pipe installed in 1967 and a 42" pipe installed in 1993, are side by side – generally within 20' of each other – all the way from the BWD plant to a location near the intersection of Joyce and Crossover Road. The 1967 pipe experiences an average of four leaks per year; the 1993 pipe had its first leak in May, 2012. Repairing one of these leaks can take up to two weeks, placing the City in the very uncomfortable position of having only one transmission line. During extreme demand conditions, neither line alone can meet peak day water supply requirements. Additionally, there is some risk that an incident that causes a problem with one pipe could disrupt both pipes.

There will be an eventual need for a third transmission line, driven by both service reliability and demand. Recognizing this need, the BWD has acquired easement to an area west of I-540 for a future water distribution point to their four customers. This location significantly enhances future flow efficiency to BWD's customer cities while simultaneously reducing risk by separating the transmission lines – one incident will not be able to impact all transmission lines to Fayetteville. Each city is responsible to run its own transmission main to this future distribution point.

### **DISCUSSION**

This project involves all actions required to acquire easements for a new water transmission line – approximately 58,000' long, and 50' wide – beginning at the existing 36" water transmission line on Van Asche Drive in Fayetteville and ending at the future Beaver Water District west clearwell/transmission line north of Elm Springs west of the Wagon Wheel exit off I-540. Major subtasks include:

1. Establish and survey (topographic and boundary) alignment and boundaries as required for easement descriptions;
  2. Identify major conflicts including utilities, current and future highways, and specifically evaluating potential karst formations, based on existing data;
  3. Determine geotechnical evaluation plan (City will execute separate geotechnical contract).
  4. Develop easement requirements, including performing land records searches, obtaining appraisals, developing easement descriptions and maps, completing easement negotiations, and developing easement offer and side letters.
- An engineering selection committee met on September 22, 2011, and selected McClelland Consulting Engineers to execute this work. The attached contract was developed through negotiations.

### **BUDGET IMPACT**

Funds are available in project 10007.

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION APPROVING A CONTRACT WITH MCCLELLAND CONSULTING ENGINEERS, INC. IN THE AMOUNT OF \$388,600.00 FOR WATER TRANSMISSION LINE LAYOUT AND EASEMENT ACQUISITION RELATED TO A THIRD CONNECTION TO BEAVER WATER DISTRICT**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:**

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby approves a contract with McClelland Consulting Engineers, Inc. in the amount of \$388,600.00 for water transmission line layout and easement acquisition related to a third connection to Beaver Water District. A copy of the contract is attached to this Resolution as Exhibit "A".

**PASSED and APPROVED** this 5<sup>th</sup> day of June, 2012.

APPROVED:

ATTEST:

By: \_\_\_\_\_  
**LIONELD JORDAN, Mayor**

By: \_\_\_\_\_  
**SONDRA E. SMITH, City Clerk/Treasurer**

AGREEMENT  
For  
PROFESSIONAL ENGINEERING SERVICES  
Between  
CITY OF FAYETTEVILLE, ARKANSAS  
And  
MCCLELLAND CONSULTING ENGINEERS, INC.

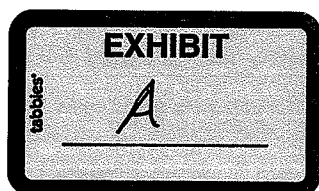
THIS AGREEMENT is made as of \_\_\_\_\_, 2012, by and between City of Fayetteville, Arkansas, acting by and through its Mayor (hereinafter called CITY OF FAYETTEVILLE) and MCCLELLAND CONSULTING ENGINEERS, INC. (hereinafter called MCCLELLAND CONSULTING ENGINEERS).

CITY OF FAYETTEVILLE from time to time requires professional engineering services in connection with the investigation, planning, and preliminary design of the Fayetteville Water Transmission Main Western Corridor. Therefore, CITY OF FAYETTEVILLE and MCCLELLAND CONSULTING ENGINEERS in consideration of their mutual covenants agree as follows:

MCCLELLAND CONSULTING ENGINEERS shall serve as CITY OF FAYETTEVILLE's professional engineering consultant in those assignments to which this Agreement applies, and shall give consultation and advice to CITY OF FAYETTEVILLE during the performance of MCCLELLAND CONSULTING ENGINEERS' services. All services shall be performed under the direction of a professional engineer registered in the State of Arkansas and qualified in the particular field.

**SECTION 1 - AUTHORIZATION OF SERVICES**

- 1.1 Services on any assignment shall be undertaken only upon written Authorization of CITY OF FAYETTEVILLE and agreement of MCCLELLAND CONSULTING ENGINEERS.
- 1.2 Assignments may include services described hereafter as Basic Services or as Additional Services of MCCLELLAND CONSULTING ENGINEERS.
- 1.3 Changes, modifications or amendments in scope, price or fees to this contract shall **not** be allowed without a formal contract amendment approved by the Mayor and the City Council **in advance** of the change in scope, costs, fees, or delivery schedule.



## **SECTION 2 - BASIC SERVICES OF MCCLELLAND CONSULTING ENGINEERS**

- 2.1 General
  - 2.1.1 Perform professional services in connection with the Project as hereinafter stated.
    - 2.1.1.1 The Scope of Services to be furnished by MCCLELLAND CONSULTING ENGINEERS during the Survey (Topographic and Boundary), Preliminary Alignment and Easement Acquisition Phase is included in Section 2.2 hereafter and in Appendix A attached hereto and made part of this Agreement.
  - 2.1.2 MCCLELLAND CONSULTING ENGINEERS shall coordinate their activities and services with the CITY OF FAYETTEVILLE. MCCLELLAND CONSULTING ENGINEERS and CITY OF FAYETTEVILLE agree that MCCLELLAND CONSULTING ENGINEERS has full responsibility for the engineering services.
- 2.2 Engineering Services – Water Transmission Line Layout and Easement Acquisition.
  - 2.2.1 Perform engineering services for the Water Transmission Line Layout and Easement Acquisition as described in the Scope of Services in Appendix A.

## **SECTION 3 - RESPONSIBILITIES OF CITY OF FAYETTEVILLE**

CITY OF FAYETTEVILLE shall,

- 3.1 Provide full information as to CITY OF FAYETTEVILLE's requirements for the Project.
- 3.2 Assist MCCLELLAND CONSULTING ENGINEERS by placing at MCCLELLAND CONSULTING ENGINEERS' disposal all available information pertinent to the assignment including previous reports and any other data relative thereto.
- 3.3 Guarantee access to and make all provisions for MCCLELLAND CONSULTING ENGINEERS to enter upon public and private property as required for MCCLELLAND CONSULTING ENGINEERS to perform the services under this Agreement.
- 3.4 Examine all studies, reports, sketches, cost opinions, proposals, and other documents presented by MCCLELLAND CONSULTING ENGINEERS and render in writing decisions pertaining thereto within seven (7) calendar days.

- 3.5 The Utilities Engineer is the CITY OF FAYETTEVILLE's project representative with respect to the services to be performed under this Agreement. The Utilities Engineer shall have complete authority to transmit instructions, receive information, interpret and define CITY OF FAYETTEVILLE's policies and decisions with respect to materials, equipment, elements and systems to be used in the Project, and other matters pertinent to the services covered by this Agreement.
- 3.6 CITY OF FAYETTEVILLE and/or its representative will review all documents and provide written comments to MCCLELLAND CONSULTING ENGINEERS in a timely manner.

#### **SECTION 4 - PERIOD OF SERVICE**

- 4.1 This Agreement will become effective upon the first written notice by CITY OF FAYETTEVILLE authorizing services hereunder.
- 4.2 The provisions of this Agreement have been agreed to in anticipation of the orderly progress of the Project through completion of the services stated in the Agreement. MCCLELLAND CONSULTING ENGINEERS will proceed with providing the authorized services immediately upon receipt of written authorization from CITY OF FAYETTEVILLE. Said authorization shall include the scope of the services authorized and the time in which the services are to be completed. The anticipated schedule for this project is included as Appendix A.

#### **SECTION 5 - PAYMENTS TO MCCLELLAND CONSULTING ENGINEERS**

- 5.1 Compensation
- 5.1.1 Water Transmission Line Layout and Easement Acquisition

The maximum not-to-exceed amount authorized for this Agreement is **\$388,600.00**. The CITY OF FAYETTEVILLE shall compensate MCCLELLAND CONSULTING ENGINEERS based on a Unit Price or Lump Sum basis as described in Appendix A.

- 5.1.1.1 Subject to the City Council approval, adjustment of the not-to-exceed amount may be made should MCCLELLAND CONSULTING ENGINEERS establish and CITY OF FAYETTEVILLE agree that there has been or is to be a significant change in scope, complexity or character of the services to be performed; or if CITY OF FAYETTEVILLE decides to shorten the duration of work from the time period specified

in the Agreement for completion of work and such modification warrants such adjustment. Changes, modifications or amendments in scope, price or fees to this Contract shall **not** be allowed without formal contract amendment approved by the Mayor and the City Council **in advance** of the change in scope, cost, fees, or delivery schedule.

5.1.1.2 Monthly statements for each calendar month shall be submitted to CITY OF FAYETTEVILLE or such parties as CITY OF FAYETTEVILLE may designate for professional services consistent with MCCLELLAND CONSULTING ENGINEERS' normal billing schedule. Once established, the billing schedule shall be maintained throughout the duration of the Project. Applications for payment shall be made in accordance with a format to be developed by MCCLELLAND CONSULTING ENGINEERS and approved by CITY OF FAYETTEVILLE. Applications for payment shall be accompanied each month by the updated project schedule as the basis for determining the value earned as the work is accomplished. Final payment for professional services shall be made upon CITY OF FAYETTEVILLE's approval and acceptance with the satisfactory completion of the study and report for the Project.

## 5.2 Statements

Statements and progress report for each calendar month will be submitted to CITY OF FAYETTEVILLE. Statements will be based on MCCLELLAND CONSULTING ENGINEERS' percent completion of the project.

## 5.3 Payments

All statements are payable upon receipt and due within thirty (30) days. If a portion of MCCLELLAND CONSULTING ENGINEERS' statement is disputed by CITY OF FAYETTEVILLE, the undisputed portion shall be paid by CITY OF FAYETTEVILLE by the due date. CITY OF FAYETTEVILLE shall advise MCCLELLAND CONSULTING ENGINEERS in writing of the basis for any disputed portion of any statement. CITY OF FAYETTEVILLE will make reasonable effort to pay invoices within 30 days of date the invoice is approved, however, payment within 30 days is not guaranteed.

## 5.4 Final Payment

Upon satisfactory completion of the work performed under this Agreement, as a condition before final payment under this Agreement, or as a termination settlement under this Agreement, MCCLELLAND

CONSULTING ENGINEERS shall execute and deliver to CITY OF FAYETTEVILLE a release of all claims against CITY OF FAYETTEVILLE arising under or by virtue of this Agreement, except claims which are specifically exempted by MCCLELLAND CONSULTING ENGINEERS to be set forth therein. Unless otherwise provided in this Agreement or by State law or otherwise expressly agreed to by the parties to this Agreement, final payment under this Agreement or settlement upon termination of this Agreement shall not constitute a waiver of CITY OF FAYETTEVILLE's claims against MCCLELLAND CONSULTING ENGINEERS or his sureties under this Agreement or applicable performance and payment bonds, if any.

**SECTION 6 - GENERAL CONSIDERATIONS**

6.1 Insurance

6.1.1 During the course of performance of these services, MCCLELLAND CONSULTING ENGINEERS will maintain (in United States Dollars) the following minimum insurance coverages:

| <u>Type of Coverage</u>  | <u>Limits of Liability</u>           |
|--|--------------------------------------|
| Workers' Compensation<br>Employers' Liability                        | Statutory<br>\$500,000 Each Accident |
| Commercial General Liability<br>Bodily Injury and<br>Property Damage | \$1,000,000 Combined Single Limit    |
| Automobile Liability:<br>Bodily Injury and<br>Property Damage        | \$1,000,000 Combined Single Limit    |
| Professional Liability Insurance                                     | \$1,000,000 Each Claim               |

MCCLELLAND CONSULTING ENGINEERS will provide to CITY OF FAYETTEVILLE certificates as evidence of the specified insurance within ten days of the date of this Agreement and upon each renewal of coverage.

6.1.2 CITY OF FAYETTEVILLE and MCCLELLAND CONSULTING ENGINEERS waive all rights against each other and their officers, directors, agents, or employees for damage covered by property insurance during and after the completion of MCCLELLAND CONSULTING ENGINEERS' services.



## 6.2 Professional Responsibility

6.2.1 MCCLELLAND CONSULTING ENGINEERS will exercise reasonable skill, care, and diligence in the performance of MCCLELLAND CONSULTING ENGINEERS' services and will carry out its responsibilities in accordance with customarily accepted professional engineering practices. CITY OF FAYETTEVILLE will promptly report to MCCLELLAND CONSULTING ENGINEERS any defects or suspected defects in MCCLELLAND CONSULTING ENGINEERS' services of which CITY OF FAYETTEVILLE becomes aware, so that MCCLELLAND CONSULTING ENGINEERS can take measures to minimize the consequences of such a defect. CITY OF FAYETTEVILLE retains all remedies to recover for its damages caused by any negligence of MCCLELLAND CONSULTING ENGINEERS.

## 6.3 Cost Opinions and Projections

Cost opinions and projections prepared by MCCLELLAND CONSULTING ENGINEERS relating to construction costs and schedules, operation and maintenance costs, equipment characteristics and performance, and operating results are based on MCCLELLAND CONSULTING ENGINEERS' experience, qualifications, and judgment as a design professional. Since MCCLELLAND CONSULTING ENGINEERS has no control over weather, cost and availability of labor, material and equipment, labor productivity, construction Contractors' procedures and methods, unavoidable delays, construction Contractors' methods of determining prices, economic conditions, competitive bidding or market conditions, and other factors affecting such cost opinions or projections, MCCLELLAND CONSULTING ENGINEERS does not guarantee that actual rates, costs, performance, schedules, and related items will not vary from cost opinions and projections prepared by MCCLELLAND CONSULTING ENGINEERS.

## 6.4 Changes

CITY OF FAYETTEVILLE shall have the right to make changes within the general scope of MCCLELLAND CONSULTING ENGINEERS' services, with an appropriate change in compensation and schedule only after Fayetteville City Council approval of such proposed changes and, upon execution of a mutually acceptable amendment or change order signed by the Mayor of the CITY OF FAYETTEVILLE and the duly authorized officer of MCCLELLAND CONSULTING ENGINEERS.

## 6.5 Termination

6.5.1 This Agreement may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this Agreement through no fault of the terminating party, provided that no termination may be effected unless the other party is given:

6.5.1.1 Not less than ten (10) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate,

6.5.1.2 An opportunity for consultation with the terminating party prior to termination.

6.5.2 This Agreement may be terminated in whole or in part in writing by CITY OF FAYETTEVILLE for its convenience, provided that MCCLELLAND CONSULTING ENGINEERS is given:

6.5.2.1 Not less than ten (10) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate,

6.5.2.2 An opportunity for consultation with the terminating party prior to termination.

6.5.3 If termination for default is effected by CITY OF FAYETTEVILLE, an equitable adjustment in the price provided for in this Agreement shall be made, but

6.5.3.1 No amount shall be allowed for anticipated profit on unperformed services or other work,

6.5.3.2 Any payment due to MCCLELLAND CONSULTING ENGINEERS at the time of termination may be adjusted to cover any additional costs to CITY OF FAYETTEVILLE because of MCCLELLAND CONSULTING ENGINEERS' default.

6.5.4 If termination for default is effected by MCCLELLAND CONSULTING ENGINEERS, or if termination for convenience is effected by CITY OF FAYETTEVILLE, the equitable adjustment shall include a reasonable profit for services or other work performed. The equitable adjustment for any termination shall provide for payment to MCCLELLAND CONSULTING ENGINEERS for services rendered and expenses incurred prior to the termination, in addition to termination settlement costs reasonably incurred by MCCLELLAND CONSULTING ENGINEERS relating to commitments which had become firm prior to the termination.

6.5.5 Upon receipt of a termination action under Paragraphs 6.5.1 or 6.5.2 above, MCCLELLAND CONSULTING ENGINEERS shall:

6.5.5.1 Promptly discontinue all affected work (unless the notice directs otherwise),

6.5.5.2 Deliver or otherwise make available to CITY OF FAYETTEVILLE all data, drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by MCCLELLAND CONSULTING ENGINEERS in performing this Agreement, whether completed or in process.

6.5.6 Upon termination under Paragraphs 6.5.1 or 6.5.2 above CITY OF FAYETTEVILLE may take over the work and may award another party an agreement to complete the work under this Agreement.

6.5.7 If, after termination for failure of MCCLELLAND CONSULTING ENGINEERS to fulfill contractual obligations, it is determined that MCCLELLAND CONSULTING ENGINEERS had not failed to fulfill contractual obligations, the termination shall be deemed to have been for the convenience of CITY OF FAYETTEVILLE. In such event, adjustments of the agreement price shall be made as provided in Paragraph 6.5.4 of this clause.

## 6.6 Delays

In the event the services of MCCLELLAND CONSULTING ENGINEERS are suspended or delayed by CITY OF FAYETTEVILLE or by other events beyond MCCLELLAND CONSULTING ENGINEERS' reasonable control, MCCLELLAND CONSULTING ENGINEERS shall be entitled to additional compensation and time for reasonable costs incurred by MCCLELLAND CONSULTING ENGINEERS in temporarily closing down or delaying the Project.

## 6.7 Rights and Benefits

MCCLELLAND CONSULTING ENGINEERS' services will be performed solely for the benefit of CITY OF FAYETTEVILLE and not for the benefit of any other persons or entities.

## 6.8 Dispute Resolution

6.8.1 Scope of Paragraph: The procedures of this Paragraph shall apply to any and all disputes between CITY OF FAYETTEVILLE and MCCLELLAND CONSULTING ENGINEERS which arise from, or in any way are related to, this Agreement, including, but not limited to

the interpretation of this Agreement, the enforcement of its terms, any acts, errors, or omissions of CITY OF FAYETTEVILLE or MCCLELLAND CONSULTING ENGINEERS in the performance of this Agreement, and disputes concerning payment.

6.8.2 Exhaustion of Remedies Required: No action may be filed unless the parties first negotiate. If timely Notice is given under Paragraph 6.8.3, but an action is initiated prior to exhaustion of these procedures, such action shall be stayed, upon application by either party to a court of proper jurisdiction, until the procedures in Paragraphs 6.8.3 and 6.8.4 have been complied with.

6.8.3 Notice of Dispute

6.8.3.1 For disputes arising prior to the making of final payment promptly after the occurrence of any incident, action, or failure to act upon which a claim is based, the party seeking relief shall serve the other party with a written Notice;

6.8.3.2 For disputes arising within one year after the making of final payment, CITY OF FAYETTEVILLE shall give MCCLELLAND CONSULTING ENGINEERS written Notice at the address listed in Paragraph 6.14 within thirty (30) days after occurrence of any incident, accident, or first observance of defect or damage. In both instances, the Notice shall specify the nature and amount of relief sought, the reason relief should be granted, and the appropriate portions of this Agreement that authorize the relief requested.

6.8.4 Negotiation: Within seven days of receipt of the Notice, the Project Managers for CITY OF FAYETTEVILLE and MCCLELLAND CONSULTING ENGINEERS shall confer in an effort to resolve the dispute. If the dispute cannot be resolved at that level, then, upon written request of either side, the matter shall be referred to the President of MCCLELLAND CONSULTING ENGINEERS and the Mayor of CITY OF FAYETTEVILLE or his designee. These officers shall meet at the Project Site or such other location as is agreed upon within 30 days of the written request to resolve the dispute.

6.9 CITY OF FAYETTEVILLE represents that it has sufficient funds or the means of obtaining funds to remit payment to MCCLELLAND CONSULTING ENGINEERS for services rendered by MCCLELLAND CONSULTING ENGINEERS.

## 6.10 Publications

Recognizing the importance of professional development on the part of MCCLELLAND CONSULTING ENGINEERS' employees and the importance of MCCLELLAND CONSULTING ENGINEERS' public relations, MCCLELLAND CONSULTING ENGINEERS may prepare publications, such as technical papers, articles for periodicals, and press releases, pertaining to MCCLELLAND CONSULTING ENGINEERS' services for the Project. Such publications will be provided to CITY OF FAYETTEVILLE in draft form for CITY OF FAYETTEVILLE's advance review. CITY OF FAYETTEVILLE shall review such drafts promptly and provide CITY OF FAYETTEVILLE's comments to MCCLELLAND CONSULTING ENGINEERS. CITY OF FAYETTEVILLE may require deletion of proprietary data or confidential information from such publications, but otherwise CITY OF FAYETTEVILLE will not unreasonably withhold approval. The cost of MCCLELLAND CONSULTING ENGINEERS' activities pertaining to any such publication shall be for MCCLELLAND CONSULTING ENGINEERS' account.

## 6.11 Indemnification

6.11.1 CITY OF FAYETTEVILLE agrees that it will require all construction Contractors to indemnify, defend, and hold harmless CITY OF FAYETTEVILLE and MCCLELLAND CONSULTING ENGINEERS from and against any and all loss where loss is caused or incurred or alleged to be caused or incurred in whole or in part as a result of the negligence or other actionable fault of the Contractors, or their employees, agents, Subcontractors, and Suppliers.

## 6.12 Computer Models.

MCCLELLAND CONSULTING ENGINEERS may use or modify MCCLELLAND CONSULTING ENGINEERS' proprietary computer models in service of CITY OF FAYETTEVILLE under this agreement, or MCCLELLAND CONSULTING ENGINEERS may develop computer models during MCCLELLAND CONSULTING ENGINEERS' service to CITY OF OFAYETTEVILLE under this agreement. Such use, modification, or development by MCCLELLAND CONSULTING ENGINEERS does not constitute a license to CITY OF FAYETTEVILLE to use or modify MCCLELLAND CONSULTING ENGINEERS' computer models. Said proprietary computer models shall remain the sole property of MCCLELLAND CONSULTING ENGINEERS. CITY OF FAYETTEVILLE and MCCLELLAND CONSULTING ENGINEERS will enter into a separate license agreement if CITY OF FAYETTEVILLE wishes to use MCCLELLAND CONSULTING ENGINEERS' computer models.

### 6.13 Ownership of Documents

All documents provided by CITY OF FAYETTEVILLE including original drawings, disks of CADD drawings and cross sections, estimates, specification field notes, and data are and remain the property of CITY OF FAYETTEVILLE. MCCLELLAND CONSULTING ENGINEERS may retain reproduced copies of drawings and copies of other documents.

Engineering documents, drawings, and specifications prepared by MCCLELLAND CONSULTING ENGINEERS as part of the Services shall become the property of CITY OF FAYETTEVILLE when MCCLELLAND CONSULTING ENGINEERS has been compensated for all Services rendered, provided, however, that MCCLELLAND CONSULTING ENGINEERS shall have the unrestricted right to their use. MCCLELLAND CONSULTING ENGINEERS shall, however, retain its rights in its standard drawings details, specifications, databases, computer software, and other proprietary property. Rights to intellectual property developed, utilized, or modified in the performance of the Services shall remain the property of MCCLELLAND CONSULTING ENGINEERS

Any files delivered in electronic medium may not work on systems and software different than those with which they were originally produced. MCCLELLAND CONSULTING ENGINEERS makes no warranty as to the compatibility of these files with any other system or software. Because of the potential degradation of electronic medium over time, in the event of a conflict between the sealed original drawings/hard copies and the electronic files, the sealed drawings/hard copies will govern.

#### Notices

Any Notice required under this Agreement will be in writing, addressed to the appropriate party at the following addresses:

CITY OF FAYETTEVILLE's address:  
113 West Mountain Street  
Fayetteville, Arkansas 72701

MCCLELLAND CONSULTING ENGINEERS' address:  
1810 North College Avenue  
Fayetteville, AR 72703

### 6.14 Successor and Assigns

CITY OF FAYETTEVILLE and MCCLELLAND CONSULTING ENGINEERS each binds himself and his successors, executors, administrators, and assigns to the other party of this Agreement and to the successors, executors, administrators, and assigns of such other party, in respect to all covenants of this Agreement; except as above, neither CITY OF FAYETTEVILLE nor MCCLELLAND CONSULTING ENGINEERS shall assign, sublet, or transfer his interest in the Agreement without the written consent of the other.

6.15 Controlling Law

This Agreement shall be subject to, interpreted and enforced according to the laws of the State of Arkansas without regard to any conflicts of law provisions.

6.16 Entire Agreement

This Agreement represents the entire Agreement between MCCLELLAND CONSULTING ENGINEERS and CITY OF FAYETTEVILLE relative to the Scope of Services herein. Since terms contained in purchase orders do not generally apply to professional services, in the event CITY OF FAYETTEVILLE issues to MCCLELLAND CONSULTING ENGINEERS a purchase order, no preprinted terms thereon shall become a part of this Agreement. Said purchase order document, whether or not signed by MCCLELLAND CONSULTING ENGINEERS, shall be considered as a document for CITY OF FAYETTEVILLE's internal management of its operations.

**SECTION 7 - SPECIAL CONDITIONS**

7.1 Additional Responsibilities of MCCLELLAND CONSULTING ENGINEERS

7.1.1 CITY OF FAYETTEVILLE's review, approval, or acceptance of design drawings, specifications, reports and other services furnished hereunder shall not in any way relieve MCCLELLAND CONSULTING ENGINEERS of responsibility for the technical adequacy of the work. Neither CITY OF FAYETTEVILLE's review, approval or acceptance of, nor payment for any of the services shall be construed as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

7.1.2 MCCLELLAND CONSULTING ENGINEERS shall be and shall remain liable, in accordance with applicable law, for all damages to CITY OF FAYETTEVILLE caused by MCCLELLAND CONSULTING ENGINEERS' negligent performance of any of the services furnished under this Agreement except for errors, omissions or other deficiencies to

the extent attributable to CITY OF FAYETTEVILLE or CITY OF FAYETTEVILLE-furnished data.

7.1.3 MCCLELLAND CONSULTING ENGINEERS' obligations under this clause are in addition to MCCLELLAND CONSULTING ENGINEERS' other express or implied assurances under this Agreement or State law and in no way diminish any other rights that CITY OF FAYETTEVILLE may have against MCCLELLAND CONSULTING ENGINEERS for faulty materials, equipment, or work.

## 7.2 Remedies

Except as may be otherwise provided in this Agreement, all claims, counter-claims, disputes and other matters in question between CITY OF FAYETTEVILLE and MCCLELLAND CONSULTING ENGINEERS arising out of or relating to this Agreement or the breach thereof will be decided in a court of competent jurisdiction within Arkansas.

## 7.3 Audit: Access to Records

7.3.1 MCCLELLAND CONSULTING ENGINEERS shall maintain books, records, documents and other evidence directly pertinent to performance on work under this Agreement in accordance with generally accepted accounting principles and practices consistently applied in effect on the date of execution of this Agreement. MCCLELLAND CONSULTING ENGINEERS shall also maintain the financial information and data used by MCCLELLAND CONSULTING ENGINEERS in the preparation of support of the cost submission required for any negotiated agreement or change order and send to CITY OF FAYETTEVILLE a copy of the cost summary submitted. CITY OF FAYETTEVILLE, the State or any of their authorized representatives shall have access to all such books, records, documents and other evidence for the purpose of inspection, audit and copying during normal business hours. MCCLELLAND CONSULTING ENGINEERS will provide proper facilities for such access and inspection.

7.3.2 Records under Paragraph 7.3.1 above shall be maintained and made available during performance on assisted work under this Agreement and until three years from the date of final payment for the project. In addition, those records which relate to any controversy arising out of such performance, or to costs or items to which an audit exception has been



taken, shall be maintained and made available until three years after the date of resolution of such appeal, litigation, claim or exception.

7.3.3 This right of access clause (with respect to financial records) applies to:

7.3.3.1 Negotiated prime agreements:

7.3.3.2 Negotiated change orders or agreement amendments in excess of \$10,000 affecting the price of any formally advertised, competitively awarded, fixed price agreement:

7.3.3.3 Agreements or purchase orders under any agreement other than a formally advertised, competitively awarded, fixed price agreement. However, this right of access does not apply to a prime agreement, lower tier subagreement or purchase order awarded after effective price competition, except:

7.3.3.3.1 With respect to record pertaining directly to subagreement performance, excluding any financial records of MCCLELLAND CONSULTING ENGINEERS;

7.3.3.3.2 If there is any indication that fraud, gross abuse or corrupt practices may be involved;

7.3.3.3.3 If the subagreement is terminated for default or for convenience.

7.4 Covenant Against Contingent Fees

MCCLELLAND CONSULTING ENGINEERS warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement of understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by MCCLELLAND CONSULTING ENGINEERS for the purpose of securing business. For breach or violation of this warranty, CITY OF FAYETTEVILLE shall have the right to annul this Agreement without liability or at its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

7.5 Gratuities

7.5.1 If CITY OF FAYETTEVILLE finds after a notice and hearing that MCCLELLAND CONSULTING ENGINEERS or any of MCCLELLAND CONSULTING ENGINEERS' agents or representatives, offered or gave gratuities (in the form of entertainment, gifts or

otherwise) to any official, employee or agent of CITY OF FAYETTEVILLE, in an attempt to secure an agreement or favorable treatment in awarding, amending or making any determinations related to the performance of this Agreement, CITY OF FAYETTEVILLE may, by written notice to MCCLELLAND CONSULTING ENGINEERS terminate this Agreement. CITY OF FAYETTEVILLE may also pursue other rights and remedies that the law or this Agreement provides. However, the existence of the facts on which CITY OF FAYETTEVILLE bases such finding shall be in issue and may be reviewed in proceedings under the Remedies clause of this Agreement.

7.5.2 In the event this Agreement is terminated as provided in Paragraph 7.5.1, CITY OF FAYETTEVILLE may pursue the same remedies against MCCLELLAND CONSULTING ENGINEERS as it could pursue in the event of a breach of the Agreement by MCCLELLAND CONSULTING ENGINEERS. As a penalty, in addition to any other damages to which it may be entitled by law, CITY OF FAYETTEVILLE may pursue exemplary damages in an amount (as determined by CITY OF FAYETTEVILLE) which shall be not less than three nor more than ten times the costs MCCLELLAND CONSULTING ENGINEERS incurs in providing any such gratuities to any such officer or employee.

#### 7.6 Arkansas Freedom of Information Act


City contracts and documents, including internal documents and documents of subcontractors and sub-consultants, prepared while performing City contractual work are subject to the Arkansas Freedom of Information Act (FOIA). If a Freedom of Information Act request is presented to the CITY OF FAYETTEVILLE, MCCLELLAND CONSULTING ENGINEERS will do everything possible to provide the documents in a prompt and timely manner as prescribed in the Arkansas Freedom of Information Act (A.C.A. §25-19-101 et seq.). Only legally authorized photocopying costs pursuant to the FOIA may be assessed for this compliance.

IN WITNESS WHEREOF, CITY OF FAYETTEVILLE, ARKANSAS by and through its Mayor, and MCCLELLAND CONSULTING ENGINEERS, by its authorized officer have made and executed this Agreement as of the day and year first above written.

CITY OF FAYETTEVILLE, ARKANSAS

MCCLELLAND CONSULTING ENGINEERS,  
INC.

By : \_\_\_\_\_  
Mayor, Lioneld Jordan  
ATTEST:

By:  \_\_\_\_\_

By: \_\_\_\_\_  
Sondra Smith, City Clerk

Title: PRESIDENT, FAYETTEVILLE

Changes, modifications or amendments in scope, price or fees to this Contract shall **not** be allowed without formal contract amendment approved by the Mayor and the City Council **in advance** of the change in scope, cost, fees, or delivery schedule.

END OF AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES

**CITY OF FAYETTEVILLE  
AGREEMENT FOR ENGINEERING SERVICES**

**APPENDIX A – SCOPE OF SERVICES**

This is **Appendix A**, consisting of 3 pages, referred to in and part of the **Agreement For Professional Engineering Services** between CITY OF FAYETTEVILLE, ARKANSAS and MCCLELLAND CONSULTING ENGINEERS, INC. dated \_\_\_\_\_.

Initial:

CITY OF FAYETTEVILLE \_\_\_\_\_

MCCLELLAND CONSULTING ENGINEERS, INC. *DJS*

The following contains additional Scope of Services tasks.

**A.1 General Scope**

The work covered by this agreement includes developing a corridor, up to and including acquiring easements, for a future water transmission line from northwest Fayetteville to a future Beaver Water District distribution point west of I-540, the conceptual routing of which was performed by others.

**A.2 Specific Scope of Services**

MCCLELLAND CONSULTING ENGINEERS shall provide a suitable engineering staff to complete the necessary field surveys, to perform preliminary alignment, to prepare easement documents, to provide needed services during easement identification, appraisal, and acquisition, and to provide other services as may be directed by the CITY OF FAYETTEVILLE. The staff shall consist of engineers, engineering technicians, inspectors, easement negotiators, and other assistants as may be necessary to carry on the work in an efficient and expeditious manner. It is expected that some subcontract work will be performed; subcontractors should be identified and approved by the City of Fayetteville. MCCLELLAND CONSULTING ENGINEERS and subcontractors will provide the following services:

**A2.1 Detailed Scope of Services**

1. Establish and survey (topographic and boundary) alignment for approximately 58,000 feet of water transmission main (50 ft. width). Meet with CITY OF FAYETTEVILLE as needed to discuss deviations from preliminary alignment.
2. Perform boundary survey as required to develop easements descriptions.
3. Identify major conflicts (specifically evaluating potential karst formations, based on existing data).
4. Identify major utilities along proposed corridor.
5. Request comments from U.S. Fish and Wildlife, State Historic Preservation Office, and U.S. Army Corps of Engineers.
6. Coordinate with Beaver Water District regarding their proposed route and distribution station to be located west of I -540.

7. Determine geotechnical evaluation plan (City will execute separate geotechnical contract).
8. Perform land records searches to identify property owners (estimated 90 parcels).
9. Develop appraisal plan for City approval; obtain appraisals (estimated 30 parcels).
10. Develop easement description and Exhibit A map for each parcel and submit to the CITY OF FAYETTEVILLE for review and approval. The CITY OF FAYETTEVILLE will be responsible for inserting easement description into easement documents.
11. Complete easement negotiations (estimated 90 parcels).
12. Develop easement offer letters and side letters for City finalization and signature.
13. Record executed documents for Benton County Parcels at the Benton Courthouse. THE CITY OF FAYETTEVILLE will record Washington County Parcels at the Washington County Courthouse.

#### A.3 Project Deliverables

The following will be submitted to the CITY OF FAYETTEVILLE, or others indicated, by the MCCLELLAND CONSULTING ENGINEERS as part of the Project.

- Topographic Survey – 50 ft wide strip topo
- Boundary Survey
- Centerline conceptual plans
- Draft easement offer letters and side letters
- Geotechnical requirements plan
- Easement documents
- Appraisal plan for City approval; obtain appraisals

#### A.4 Compensation

In consideration of the performance of the foregoing services by MCCLELLAND CONSULTING ENGINEERS, the CITY OF FAYETTEVILLE shall pay to MCCLELLAND CONSULTING ENGINEERS compensation as follows:

1. Compensation shall be paid to MCCLELLAND CONSULTING ENGINEERS on the basis of MCCLELLAND CONSULTING ENGINEERS's standard hourly rates in effect at the time the work is performed, plus reimbursable expenses. Rates are adjusted annually at the beginning September 1<sup>st</sup> of each calendar year. MCCLELLAND CONSULTING ENGINEERS agrees to keep the CITY OF FAYETTEVILLE apprised in a timely manner of costs incurred.
2. The reimbursable expenses for which MCCLELLAND CONSULTING ENGINEERS will be reimbursed shall include travel expenses when traveling outside Northwest Arkansas in connection with the project, rental expenses for special equipment needed for completion of the work, purchase of material, and other expenses directly attributable to the project,

including any work performed by subcontractors. MCCLELLAND CONSULTING ENGINEERS shall charge the CITY OF FAYETTEVILLE for reimbursable expenses at actual cost plus ten percent (10%).

The maximum not-to-exceed amount authorized by this contract is **\$388,600**.

A.4 Project Schedule

MCCLELLAND CONSULTING ENGINEERS shall begin work under this Agreement within fourteen (14) calendar days of a Notice to Proceed (NTP) and shall complete the work described in Section A2.1 within 18 months of issuance of the notice to proceed.

| City Of Fayetteville - Purchase Order (PO) Request  |  |   |               |                           |               | Requisition No.:        | Date:                   |                 |               |
|---|--|---|---------------|---------------------------|---------------|-------------------------|-------------------------|-----------------|---------------|
| (Not a Purchase Order)  |  |   |               |                           |               |                         | 5/15/2012               |                 |               |
| All purchases under \$2500 shall be used on a P-Card unless medical or 1099 service related. (Call x256 with questions) |  |   |               |                           |               | P.O Number:             | Expected Delivery Date: |                 |               |
| All PO Request shall be scanned to the Purchasing e-mail: Purchasing@ci.fayetteville.ar.us                              |  |   |               |                           |               |                         |                         |                 |               |
| Vendor #:   |  | Vendor Name:                            |               | Mail                      |               | Yes:                    |                         | No: X           |               |
| 7460  |  | McClelland Consulting Engineers, Inc.   |               | Fob Point:                |               | Taxable                 |                         | Quotes Attached |               |
| Address:  |  |   |               | City:                     |               | Yes:                    |                         | No: _____       |               |
| 1810 N. College Avenue, PO Box 1229   |  |   |               | Fayetteville              |               | Yes: _____              |                         | No: _____       |               |
| State:  |  | Zip Code:                               |               | Ship to code:             |               | Division Head Approval: |                         |                 |               |
| AR  |  | 72702                                   |               |                           |               | <i>[Signature]</i>      |                         |                 |               |
| Requester:  |  |   |               | Requester's Employee #:   |               | Extension:              |                         |                 |               |
| Allison Atha <i>[Signature]</i>   |  |   |               | 2613                      |               | 670                     |                         |                 |               |
| Item  | Description  | Quantity                                | Unit of Issue | Unit Cost                 | Extended Cost | Account Numbers         | Project/Subproject #    | Inventory #     | Fixed Asset # |
| 1   | Engineering services agreement for water transmission line layout and easement acquisition | 1                                       | JOB           | 388,600.00                | \$388,600.00  | 5400-5600-5808.00       | 10007.1                 |                 |               |
| 2   |  |   |               |                           | \$0.00        |                         |                         |                 |               |
| 3   |  |   |               |                           | \$0.00        |                         |                         |                 |               |
| 4   |  |   |               |                           | \$0.00        |                         |                         |                 |               |
| 5   |  |   |               |                           | \$0.00        |                         |                         |                 |               |
| 6   |  |   |               |                           | \$0.00        |                         |                         |                 |               |
| 7   |  |   |               |                           | \$0.00        |                         |                         |                 |               |
| 8   |  |   |               |                           | \$0.00        |                         |                         |                 |               |
| 9   |  |   |               |                           | \$0.00        |                         |                         |                 |               |
| 10  |  |   |               |                           | \$0.00        |                         |                         |                 |               |
| *   | Shipping/Handling  |   | Lot           |                           | \$0.00        |                         |                         |                 |               |
| Special Instructions:   |  |   |               |                           |               | Subtotal:               |                         | \$388,600.00    |               |
| RFQ 11-01, Selection #1   |  |   |               |                           |               | Tax:                    |                         | _____           |               |
|   |  |   |               |                           |               | Total:                  |                         | \$388,600.00    |               |
| Approvals:  |  |   |               |                           |               |                         |                         |                 |               |
| Mayor: _____  |  | Department Director: <i>[Signature]</i> |               | Purchasing Manager: _____ |               |                         |                         |                 |               |
| Finance & Internal Services Director: <i>[Signature]</i>  |  | Budget Manager: _____                   |               | IT Manager: _____         |               |                         |                         |                 |               |
| Dispatch Manager: _____   |  | Utilities Manager: _____                |               | Other: _____              |               |                         |                         |                 |               |

